SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1867

JACOB SCHEIN and MARVIN H. SCHEIN,

Petitioners,

v.

CAESAR'S WORLD, INC., CLIFFORD S. PERLMAN, STUART Z. PERLMAN, WILLIAM H. McELNEA, JR., JAY E. LESHAW, HAROLD E. CAMPBELL, JR., BERTIN J. PEREZ, L. JOHN POLITE, JR., and MELVIN CHASEN,

Respondents.

BRIEF OF RESPONDENTS, CLIFFORD S. PERLMAN, STUART Z. PERLMAN, WILLIAM H. McELNEA, JR., JAY E. LESHAW, HAROLD E. CAMPBELL, JR., BERTIN J. PEREZ, L. JOHN POLITE, JR., AND MELVIN CHASEN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	PAGE
Questions Presented	1
Statement of the Case	2
Reasons Why the Writ Should Be Denied	9
POINT I—Petitioners were accorded ample opportunity to conduct all necessary discovery, and failed to raise any genuine issue of material fact	9
POINT II—The District Court and the Court of Appeals correctly applied the Florida business judgment rule	10
Conclusion	12
Appendix	13

TABLE OF AUTHORITIES

Chambers & Company v. *Equitable Life Assurance Society*, 224 F.2d 338 (5th Cir. 1955)	9
Citizens National Bank v. *Peters*, 175 So.2d 54 (Fla. Ct. of App. 1965)	12
James Talcott, Inc. v. *McDowell*, 148 So.2d 36 (Fla. Ct. of App. 1962)	12
Orlando Orange Groves Co. v. *Hale*, 119 Fla. 159, 161 So. 284 (1935)	12
Waldron v. *Cities Service Co.*, 361 F.2d 671 (2d Cir. 1966) *aff'd sub nom. First National Bank of Arizona* v. *Cities Service Co.*, 391 U.S. 253 (1968)	9

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Questions Presented

Petitioners do not accurately set forth the questions presented. The actual questions presented are:

1. Were the courts below correct in holding that summary judgment should be granted where, after petitioners completed all the depositions which they had requested, as well as extensive production of documents and requests for admissions, and had been offered the opportunity to con-

duct further depositions, but chose not to do so, petitioners were still unable to raise any genuine issue of material fact?

2. Were the courts below correct in holding that the Florida business judgment rule precluded review by the courts of a decision by corporate officers and directors to compromise a complex dispute, without litigation, where the undisputed facts showed that:

(a) the basis of Petitioners' complaint was an alleged failure to cause Caesar's World to execute a rental agreement with Centronics Data Computer Corporation, irrevocably committing Caesar's World to large rent payments for nonfunctioning equipment in order to protect a possible profit in a speculative stock;

(b) in any event Caesar's World did offer to enter into such a rental agreement, which Centronics refused; and

(c) Caesar's World compromised the resulting dispute with Centronics, at a profit to Caesar's World of over $6.7 million?

Statement of the Case

In an effort to simulate a question to warrant review by this Court, petitioners have directly misstated the facts in the record. It is simply not true, as asserted in the Petition (page 2), that "depositions were not completed" before the grant of summary judgment by the District Court, or that (*ibid.*, p. 10) the District Court "made its decision without access to petitioners' entire discovery". As further set forth below, the record shows that every deposition which petitioners requested had been completed, and had been considered by the District Court, when the motion for summary judgment was granted. The record further shows that petitioners were advised by the District Court

that they could conduct additional depositions if they so desired, and that petitioners made no request to do so.

The decisions below are clearly correct on the merits, and in any event raise no question which calls for review by this Court. In this diversity action, a derivative suit purportedly brought on behalf of Caesars World, Inc. ("CWI"), petitioners originally alleged that the officers and directors of CWI caused damage to the corporation by negligently making a late tender of a rental payment required under the lease for certain equipment (R. 4).* After discovery, petitioners were obliged to concede that the specific allegations of the original complaint were "incorrect or unproveable" (R. 677). Instead of withdrawing the action, however, petitioners amended the complaint and continued the case on a new and different theory. They were permitted to conduct further extensive discovery after the amendment, including oral depositions of all of the officers and directors of CWI. among others, and obtain voluminous production of documents, and two sets of requests for admissions. After permitting petitioners exhaustive discovery under their amended complaint, after examining the transcripts of all the depositions which petitioners had requested, and after offering petitioners the opportunity to conduct further depositions if they so desired, the District Court concluded that they had still failed to raise any triable issue of material fact, and the Court of Appeals summarily affirmed on the opinion below.

The facts as to the underlying transactions are fully set forth in the opinion of the District Court, upon which the Court of Appeals affirmed (491 F.2d 17), and need not be restated at length. Briefly, the subject matter related to two related contracts between CWI and Centronics Data Computer Corporation ("Centronics"). One of the contracts was an equipment lease ("the Lease"), under

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* References to "(R.)" are to pages of the record on appeal in the Court of Appeals.

which a wholly-owned subsidiary of CWI leased from Centronics a system of casino equipment. In order to induce CWI to execute the Lease, since the equipment system was untested and unproven, Centronics executed an assignment to CWI of an option to acquire a large block of Centronics stock ("the Assignment").

The Lease provided for a rent-free trial period of six months, to commence when a specified minimum amount of equipment was placed in operation, after which an agreement was to be executed fixing the rent (R. 471-73). Either party could terminate the Lease at will, at any time prior to the end of the trial period. However, the Assignment provided that, if the Lease were terminated by either party before reaching the rental agreement, Centronics would have the option to recapture up to 50 percent of the stock which CWI had acquired under the Assignment (R. 489-90).

Two major developments followed, neither of which had been foreseen by the parties in executing the agreement. First, due to technical problems, the equipment system installed by Centronics failed to function. The President of Centronics, examined as a witness by petitioners, testified that the minimum equipment specified in the Lease for commencement of the trial period was never placed in operation (R. 186). Meanwhile, the price of the Centronics stock which CWI acquired under the Assignment rose rapidly: by April, 1972, the stock which CWI had acquired at $3.33 a share was selling at $34.00 a share (R. 442). The stock could not be sold, however, until it had been registered, and Centronics did not act upon CWI's request for the preparation of a registration statement, to which CWI was entitled under the Assignment (R. 442).

Because of the sharp rise in the Centronics stock, CWI sought to extinguish Centronics' right to recapture that stock by offering to execute the rental agreement even though the equipment was not functioning (R. 442). Centronics, however also came to the conclusion that the stock became more valuable than the Lease (R. 166). Accordingly, Centronics

refused the rental agreement offered by CWI, and announced its intention to exercise the option to recapture 50 percent of the stock (R. 507). Centronics took the position that, since the minimum equipment had never been placed in operation there had never been a test period and Centronics had the absolute right to terminate (R. 169-170).

The management of CWI was thus faced with the prospect of litigation, during which its Centronics stock would have remained unregistered and unsalable. The Board of CWI was concerned that, even if it ultimately prevailed in litigation, the price of such a volatile stock could drop as sharply as it had risen (R. 445). Accordingly, the management of CWI decided that a negotiated settlement would serve the interests of the Corporation better than litigation. A compromise was negotiated under which Centronics purchased back at cost 155,000 shares, out of 255,000 shares it had originally claimed (leaving CWI with a total of 355,000 shares); Centronics waived its alleged right to purchase an additional 100,000 shares; and Centronics proceeded with the preparation of the registration statement previously requested by CWI (R. 517-20). CWI subsequently sold part of the Centronics stock at a net pre-tax profit of $6,767,000 (R. 446).

The original complaint herein alleged that CWI had been late in tendering a rental payment under the lease, that as a result of this late payment Centronics had claimed the right to repurchase 250,000 shares of the stock and that "after litigation" CWI turned over 150,000 shares of the stock to Centronics in settlement. As noted above, plaintiffs conceded after discovery that these original allegations were "incorrect or unproveable" (R. 677)*, but never-

* Petitioner Marvin Schein testified at his deposition that he had never seen the complaint herein before it was filed (R. 942), and that he could not have verified it in its original form, without additional information (R. 955). He further testified that he had not retained plaintiffs' attorney of record herein and literally did not know of that attorney's existence until shortly before his deposition was taken (R. 943).

theless continued extensive discovery proceedings in an effort to establish a claim on some other theory. In the course of these proceedings plaintiffs conducted and completed extensive discovery proceedings, including the Deposition of Robert Howard, the President of Centronics, as a nonparty witness; inspection of all Centronics documents relating to the CWI transaction (see R. 115-17; extensive additional documents were produced at Howard's deposition, but were not marked as exhibits by petitioners); the Deposition of Clifford Perlman, Chairman of the Board of CWI, who basically conducted the Centronics transaction for CWI; the Deposition of Stuart Perlman, Vice Chairman of the Board of CWI; the Deposition of William McElnea, President and a Director of CWI; the Deposition of Melvin Chasen, President of CWI at the time of the transactions; the Deposition of Bertin Perez, Treasurer of CWI; the Deposition of Richard H. Sheehan, Jr., Secretary and Corporate Counsel of CWI; the Deposition of J. E. Leshaw, Senior Vice President of CWI; the Deposition of L. John Polite, an outside Director of CWI; the inspection of CWI documents; and two sets of Requests for Admissions.

In the light of these facts, petitioners' claim that they were denied adequate discovery is clearly spurious. Further, petitioners' statement (page 2) that "depositions were not completed" is flatly untrue. The record herein shows that every deposition which petitioners indicated a desire to take was in fact taken, and completed. Further, the District Court made it clear that petitioners would be allowed to conduct any other depositions that they might request (R. 1064), but no such request was made.

After abandoning their original claim, based on the nonexistent late rental payment, petitioners argued in the District Court that the officers and directors had been negligent is not executing a rental agreement in order to extinguish Centronics' right to recapture the stock. This

contention, however, met two additional obstacles. First, such a transaction would have involved an obvious risk, since the Centronics stock could have fallen as sharply as it rose, leaving CWI saddled with a huge rental obligation for non-functioning equipment. At the argument on the motion, the District Court raised this question, which petitioners never undertook to answer (R. 1053):

> "The Court: What would the plaintiffs have said if they had entered into it on time, executed the Lease?
>
> "Mr. Kramer: They wouldn't have said anything.
>
> "The Court: Then all the stock started dropping in price and the equipment didn't work.
>
> "What would the plaintiffs then have said about the trial period and making certain that the equipment would work?
>
> "Mr. Kramer: It seems to me that at that point had the stock—You have to, of course, look at the stock, which is another factor. This is a company that we are dealing with—
>
> "The Court: You are looking at it with hindsight."

And further (R. 1055):

> "The Court: You do not think that stocks that go straight up also come straight down?
>
> "Mr. Kramer: They certainly do, Your Honor. They most certainly do. We have all had experience in that, to our great sorrow."

The second flaw in petitioners' amended claim was that the management of CWI, in fact, did seek to execute a rental agreement, and that Centronics refused to do so. This point, also, was never met by petitioners in the court below. Petitioners argue that CWI had an absolute right to execute the rental agreement, and to extinguish Centronics' right to the stock. CWI, in fact, took the same

position in its dispute with Centronics. But, when Centronics took a contrary position, the management of CWI was faced with a decision: whether to vindicate their position in the courts, letting CWI meanwhile take its chances on the rise or fall of the unregistered stock, or whether to compromise so that the stock could be promptly registered and sold. The District Court, in its opinion which was adopted by the Court of Appeals, set forth the position as follows (491 F.2d at 20):

> "Thus, faced with the prospect of protracted litigation—in which Caesar's World might not prevail—over the contractual rights of the parties to unregistered volatile stock whose value might plummet as spectacularly as it has risen, the defendant directors executed a compromise agreement with Centronics. (While it is not dispositive of the issue at bar, it is noteworthy that an immediate profit of $6,767,000, on a $1,700,000 investment, accrued to Caesar's World as a result of the compromise.)
>
> "Vested with the management of the business of Caesar's World, it was incumbent upon the corporate directors to evaluate the relative risks of alternative course of action. Accordingly, the decision of the defendant directors was indisputably a sound exercise of their business judgment which, absent any allegations or showing of bad faith or fraud, is not judicially reviewable."

Respondents submit that this decision was clearly correct, as a matter of Florida law, and that the present petition is without merit.

Reasons Why the Writ Should Be Denied

POINT I

Petitioners were Accorded Ample Opportunity to Conduct All Necessary Discovery, and Failed to Raise any Genuine Issue of Material Fact.

The authorities cited in the Petition, for the unquestioned proposition that discovery should be liberally allowed prior to granting summary judgment, are wholly inapplicable to the present action. The record herein discloses that petitioners were afforded ample opportunity to conduct discovery, and after doing so, were still unable to raise any genuine issue of material fact. As set forth above, petitioners conducted and completed every one of the depositions which they requested, including depositions of the Chairman of the Board, Vice Chairman, President, former President Secretary and Corporate Counsel, Treasurer, and outside directors of CWI. Although petitioners complain of their difficulties in obtaining CWI documents, it is not disputed that they did in fact obtain voluminous documents from CWI, even though the documents requested were largely irrelevant to the purported claim. Petitioners further requested, and obtained, extensive sets of admissions under Rule 36. Petitioners further took, and completed, the oral depositions of Centronics, as a nonparty witness, and conducted full inspection of Centronics' documents. Finally, the District Court made it clear that if petitioners wished to conduct still further depositions, they would be permitted to do so (R. 1063-65). Under these circumstances, the granting of summary judgment was fully warranted. *See, e.g., Chambers & Company* v. *Equitable Life Assurance Society*, 224 F.2d 338, 346 (5th Cir. 1955); *Waldron* v. *Cities Service Co.*, 361 F.2d 671, 673 (2d Cir. 1966), *aff'd sub nom. First National Bank of Arizona* v. *Cities Service Co.*, 391 U.S. 253 (1968).

Although petitioners were in fact accorded full discovery, the Petition seeks to create a contrary impression by mis-

stating and distorting the facts in the record. We have already noted the flatly untrue statement (Petition, page 2), that "depositions were not completed". Equally untrue is the assertion (Petition, page 12) that "Petitioners asked for and never received CW's minutes and by-laws": The record discloses that in fact Petitioners were furnished with the CWI board minutes relating to the Centronics transactions, and with a complete set of CWI's by-laws.

Petitioners are also disingenuous in alleging (Petition, page 10) that, because two of the depositions "were not filed with the court" until after disposition of the motion, "[t]he lower court therefore made its decision without access to petitioners' entire discovery." What petitioners omit to state is that, by agreement of counsel, copies of the depositions in question had been delivered directly to the District Judge, prior to the formal filing, and were before him when the motion was granted (R. 1596). The District Court expressly noted that, in passing on the motion, it had read and considered all of the discovery material submitted by the parties. 491 F.2d at 18.

Petitioners' contention (pages 13-18) that the courts below "ignored" issues of fact, is equally insubstantial. The "issues of fact" to which petitioners refer were issues that would have been presented if the management of CWI had chosen to litigate, rather than compromise, its claim against Centronics. The only issue presented in this action was whether, as a matter of Florida law, the business judgment of management in deciding to compromise the claim was subject to review in the courts. The District Court held that it was not, and it is submitted that this holding correctly stated the applicable state law.

POINT II

The District Court and the Court of Appeals correctly applied the Florida Business Judgment Rule.

Petitioners' contentions as to the application of Florida law to the instant facts (Petition, pages 18-23) would not call for review in this Court even if they were otherwise

well founded. The present action, despite some unusual factual features (*e.g.*, the situation of directors being sued for corporate waste on a transaction which earned the company a $6.7 million profit) is simply a garden variety, state law diversity suit for corporate waste. The application of the usual rules of state law in such cases, to the facts in this action, presents no appropriate subject for certiorari.

Further, petitioners' position is in fact without merit, and petitioners' argument on the state law issue is based upon a misstatement of the holding below. By quoting a part of one sentence from the District Court's opinion, out of context (Petition, page 18), petitioners seek to imply that the courts below held that the directors of a Florida corporation cannot be liable for negligence. As an examination of the opinion makes clear, this is simply not true. Thus, the District Court stated the controlling issue of Florida law in the following terms (491 F.2d at 18):

> "Initially, it is to be noted that the management of corporate business is vested in the directors of a corporation, the directors having wide discretion in the exercise of business judgment in the performance of their duties. F.S.A., § 608.09. *While directors are required to discharge their duties with the diligent care and skill which ordinarily prudent men would exercise under similar circumstances in like positions,* they incur no liability to the corporation for issues of business expediency which they resolve through the mere exercise of their business judgment. See e.g. Yarnall Warehouse and Transfer, Inc. v. Three Ivory Bros. Moving, Fla.App., 266 So.2d 887 (1969); Citizens Nat. Bank of St. Petersburg v. Peters, Fla.App., 175 So.2d 54 (1965). Thus, it is to an application to plaintiffs' cause of these controlling principles that this order now turns." [Emphasis supplied]

The District Court proceeded to apply these principles to the decision by CWI's management to compromise its

dispute with Centronics over the volatile Centronics stock. After reviewing the undisputed facts as to this decision, in the light of the record developed by petitioners' voluminous discovery, the court held (at 491 F.2d 19):

> "It is patently obvious to this Court that in executing the compromise agreemnt, the directors of Caesar's World fulfilled their corporate duties with the diligent care and skill which ordinarily prudent men would exercise under similar circumstances in like positions."

It is clear, we submit, that the courts below correctly stated and applied the applicable Florida law. *See e.g., Orlando Orange Groves Co.* v. *Hale,* 119 Fla. 159, 161 So. 284 (1935); *Citizens National Bank* v. *Peters,* 175 So.2d 54, 56 (Fla. Ct. of App. 1965); *James Talcott, Inc.* v. *McDowell,* 148 So.2d 36, 37-38 (Fla. Ct. of App. 1962). The fact that petitioners were driven to misstate the court's holding, in order to attack it, further indicates that its correctness is not seriously open to question.

CONCLUSION

For the reasons set forth above, the petition should be denied.

Respectfully submitted,

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APPENDIX

Opinion of the United States Court of Appeals for the Fifth Circuit

491 F.2d 17

Before COLEMAN, DYER and RONEY, Circuit Judges.

PER CURIAM:

Upon full consideration of the records and briefs in this case, the judgment of the District Court is affirmed on the memorandum opinion of Judge Peter T. Fay, dated September 12, 1973, hereto attached.

Affirmed.

APPENDIX

Opinion of District Court

FAY, District Judge.

Presented for judicial disposition at the instant stage of this derivative action litigation is the Motion for Summary Judgment of the individual defendants, who are officers and directors of defendant Caesar's World, Inc., on whose behalf this cause was instituted. Antedating the Court's decision on defendants' motion has been an extensive review and analysis of plaintiff shareholders' grievances, as defined in their amended complaint and in oral argument before the Court, all discovery material and legal memoranda submitted by the parties to this cause, and, finally, a thorough study of the case law pertinent to the liability of corporate officers and directors for failure to use the care required of them by virtue of their corporate position. Mandated by such review and analysis is the granting of defendants' Motion for Summary Judgment.

[1, 2] Initially, it is to be noted that the management of corporate business is vested in the directors of a corporation, the directors having wide discretion in the exercise of business judgment in the performance of their duties. F.S.A., § 608.09. While directors are required to discharge their duties with the diligent care and skill which ordinarily prudent men would exercise under similar circumstances in like positions, they incur no liability to the corporation for issues of business expediency which they resolve through the mere exercise of their business judgment. See e. g. Yarnall Warehouse and Transfer, Inc. v. Three Ivory Bros. Moving, Fla.App., 226 So.2d 887 (1969); Citizens Nat. Bank of St. Petersburg v. Peters, Fla.App., 175 So.2d 54 (1965). Thus, it is to an application to plaintiffs' cause of these controlling principles that this order now turns.

Plaintiffs, through their amended complaint, attribute "diminution and/or wasting of Corporation assets" to the individual defendants as a result of defendants' alleged "negligence, inattention, carelessness, lack of diligence, lack of care, lack of skill of an ordinary prudent man, lack of ordinary care, failure to properly discharge fiduciary or quasi-fiduciary duties, and mismanagement . . . ." (Amended Complaint, para. 16) The genesis of such purported corporate waste and this lawsuit is a written "Equipment Lease" executed March 2, 1971, by Centronics Data Computer Corporation and Desert Palace, Inc., a wholly-owned subsidiary of defendant Caesar's World, Inc.

Pursuant to the lease, Centronics undertook to install a computerized casino system in the Caesar's Palace Casino operated by Desert Palace. Under the lease, either party had the right to terminate the agreement prior to the end of a six month's rent-free period commencing when "sufficient equipment and accessories" were "installed . . . and operating . . . ."

Appendix.

Simultaneously with, and as an inducement to, the execution of the Equipment Lease, Centronics assigned to Caesar's World an option to purchase 510,000 shares of Centronics stock. The right to recapture fifty percent of the stock, however, was retained by Centronics in the event of the termination of the equipment lease prior to the end of the six month period. While Centronics was endeavoring to install an operable casino system, the price of its stock began to rise. Consequently, Caesar's World exercised its option and purchased the 510,000 shares in September, 1971.

Relevant portions of the "Equipment Lease" provide as follows:

5. TRIAL PERIOD AND AGREEMENT AS TO RENT:

(a) Lessee shall use the equipment and accessories being leased to it under this agreement without charge for a period of six months *beginning on the day there is installed at the locations set forth . . . and operating sufficient equipment and accessories* to make the system . . . operate at least one twenty-one table and at lease one craps table. . . .

(b) Unless Lessee notifies Lessor *prior to the end of the six month trial period* that Lessee does not want to continue to use the equipment and accessories being leased hereunder, prior to the end of the six month period, Lessee and Lessor will execute and affix to this equipment lease, an Exhibit "C" setting forth a monthly rent for the equipment and accessories being leased hereunder. *Neither Lessee nor Lessor will be required to execute such Exhibit "C" except* that if Lessee will execute an Exhibit "C" calling for a rent of at least $10,000 per month, Lessor will be required to execute such Exhibit "C" calling for a rent of not more than $5,000 per month, Lessee will be required to execute such Exhibit "C".

> (c) *If prior to the end of the six month trial period either party notifies the other that it does not wish to continue* operating the equipment and accessories . . . (i) promptly upon receipt of such notice Lessor will remove all such equipment and accessories, (ii) Lessor will reimburse Lessee for all costs . . . in excess of $3,500 reasonably incurred by Lessee in restoring the property and fixtures . . . ; and (iii) except as provided in clauses (i) and (ii) neither Lessee nor Lessor shall have any further obligations under this Equipment Lease or otherwise relating to the system . . . .

[3] It is undisputed that, because of unforeseen technical problems, the equipment and accessories comprising the subject casino system were never placed in operation. However, it is plaintiffs' simplistic position that because of the rise in value of Centronics' stock, defendants breached their corporate fiduciary duty by not acting—under 5(b) of the lease—to fix the rent under the Equipment Lease in an effort to extinguish Centronics' right to recapture its stock. Presumably, plaintiffs would have had the corporate directors obligate Caesar's World to pay $10,000 per month for the full period of the lease for equipment which was not functional at the time and may never have been made operable.

Defendant directors did, in fact, offer to execute such an agreement. However, such offer was refused by Centronics, and, rather than insisting upon what plaintiffs now assert the rights of Caesar's World to have been under the Equipment Lease, the defendant directors settled a dispute between Caesar's and Centronics—which dispute arose in April, 1972, following the sharp increase in the price of Centronics stock—as to each corporation's rights under the lease and assignment agreements. Under the compromise agreement, Centronics was permitted to purchase 100,000 shares out of the 250,00 it had claimed, waiving any claim to the remainder of

the shares and agreeing—which it had previously refused to do—to register the stock, a prerequisite to Caesar's World's ability to sell the volatile stock.

It is patently obvious to this Court that in executing the compromise agreement, the directors of Caesar's World fulfilled their corporate duties with the diligent care and skill which ordinarily prudent men would exercise under similar circumstances in like positions. While not passing on the merit of the contention, a persuasive argument could be made that Caesar's right to require execution of "Exhibit C", thus foreclosing Centronics from recapturing one-half of its stock, did not ripen until the comencement of the six month trial period. Under the terms of the Equipment Lease, the trial period was commenced:

> . . . beginning on the day there is installed at the locations set forth . . . and operating sufficient equipment and accessories to make the system . . . operable . . . .

Since it is undisputed that the subject equipment and accessories were never in operation, Centronics could have legitimately contended that its right to recapture the stock was absolute in view of the lease's provision that either party could terminate its contractual obligations upon notice to the other party at any time "prior to the end of the six month trial period . . . ." Further, even the execution of "Exhibit C" by Centronics under the circumstances heretofore delineated could have subjected that instrument to attack on the basis of fraud or overreaching by Caesar's World.

Thus, faced with the prospect of protracted litigation—in which Caesar's World might not prevail—over the contractual rights of the parties to unregistered volatile stock whose value might plummet as spectacularly as it has risen, the defendant directors executed a compromise agreement with Centronics. (While it is not dispositive of the issue at bar, it is noteworthy that an immediate profit of $6,767,-

000, on a $1,700,000 investment, accrued to Caesar's World as a result of the compromise.)

Vested with the management of the business of Caesar's World, it was incumbent upon the corporate directors to evaluate the relative risks of alternative courses of action. Accordingly, the decision of the defendant directors was indisputably a sound exercise of their business judgment which, absent any allegations or showing of bad faith or fraud, is not judicially reviewable. These principles were recently enunciated as follows:

> . . . The management of corporate business is vested in the directors of the corporation, and Courts in Florida have given to directors wide discretion in the exercise of business judgment in the performance of their duties. A Court of equity will not attempt to pass upon questions of mere business expediency or the mere exercise of business judgment, which is vested by law in the governing body of the corporation. Yarnall Ware & Tr., Inc. v. Three Ivory Bros. Mov. Co., *supra,* 226 So.2d at 890-891; Citizens National Bank v. Peters, Fla.App.1965, 175 So.2d 54; Orlando Orange Groves Co. v. Hale, 119 Fla. 159, 161 So. 284; 18 C.J.S. Corporations § 520; 7 Fla.Jur., Corporations §§ 158, 281.

Thus, plaintiffs have been accorded the opportunity to present their cause and offer testimony and evidence as to their claims. A thorough review of all presentations of the parties, in addition to all depositions and pleadings filed, conclusively establishes the lack of any factual issues to be tried in this litigation. Accordingly, summary judgment is hereby granted in favor of the defendants, Caesar's World, Inc., Clifford S. Perlman, Stuart Z. Perlman, William H. McElnea, Jr., Jay E. Leshaw, Harold E. Campbell, Jr., Bertin J. Perez, Richard A. Sheehan, Jr., L. John Polite, Jr. and Melvin Chasen, and against the plaintiffs, Jacob Schein and Marvin H. Schein, defendants being so entitled as matter of law.